
A BILL FOR AN ACT

RELATING TO TORT ACTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature recognizes that collateral
2 source payments occur whenever a plaintiff in a tort action
3 receives compensation or benefits from a third party that is not
4 involved in the litigation to compensate for damages the
5 plaintiff sustained and the "collateral source rule" bars
6 defendants from introducing evidence to show that a plaintiff
7 has received collateral source payments. The legislature
8 further recognizes that although section 663-10, Hawaii Revised
9 Statutes, provides collateral sources with recourse against a
10 plaintiff, the practice has shown that often plaintiffs in tort
11 actions essentially recover damages twice and the collateral
12 sources are not reimbursed because tort actions may last for an
13 extended period of time and notices required to present claims
14 of a lien or for subrogation are not provided before the court
15 enters a judgment or stipulation for dismissal.

16 Moreover, the legislature finds that tort litigation has
17 increased substantially and the cost of litigation has risen as



1 well. The legislature finds that these increases have an impact
2 on the price and availability of insurance products.

3 The legislature believes that the recovery of medical and
4 incident-related expenses as damages by plaintiffs who are also
5 reimbursed for the same expenses from other sources contributes
6 to the increase in the cost of insurance products and related
7 litigation.

8 The legislature intends that plaintiffs be compensated
9 fully for any medical or incident-related expenses, but not
10 receive compensation more than once for the same expenses and
11 that collateral sources be able to recover moneys paid to the
12 plaintiff, either from the plaintiff or a defendant.

13 SECTION 2. The purpose of this Act is to provide
14 collateral sources with a direct right of subrogation against
15 the defendants in a tort action.

16 SECTION 3. Section 663-10, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) In any civil action in tort, the court, before any
19 judgment or stipulation to dismiss the action is approved, shall
20 determine the validity of any claim of a lien against the amount
21 of the judgment or settlement by any person who files timely
22 notice of the claim to the court or to the parties in the



1 action. The judgment entered, or the order subsequent to
2 settlement, shall include a statement of the amounts [~~, if any,~~]
3 due [~~and owing~~] to any person determined by the court to be a
4 holder of a valid lien and to be paid to the lienholder out of
5 the amount of the corresponding special damages recovered by the
6 judgment or settlement. In determining the payment due the
7 lienholder, the court shall deduct from the payment a reasonable
8 sum for the costs and fees incurred by the party who brought the
9 civil action in tort. As used in this section, lien means a
10 lien arising out of a claim for payments made or indemnified
11 from collateral sources, including health insurance or benefits,
12 for costs and expenses arising out of the injury which is the
13 subject of the civil action in tort. If there is a settlement
14 before suit is filed or there is no civil action pending, then
15 any party may petition a court of competent jurisdiction for a
16 determination of the validity and amount of any claim of a lien.
17 In addition, collateral sources shall have a right of
18 subrogation or reimbursement directly against the defendant. A
19 collateral source shall be limited to the actual amount paid to
20 the plaintiff and the collateral source may only recover once,
21 either from the plaintiff or the defendant. If the collateral
22 source recovers moneys from the defendant directly, the judgment



H.B. NO. 85

1 entered or the order subsequent to settlement, shall include a
2 statement of the amount recovered and no deduction shall be made
3 from the special damages awarded in the jury verdict."

4 SECTION 4. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 5. This Act shall take effect upon its approval.

7

INTRODUCED BY: _____

mwL

JAN 17 2007



Report Title:

Torts; No-fault; Collateral Source Rule

Description:

Permits collateral sources that made payments to a plaintiff in a personal injury action to recover those payments directly from the defendant in the action.

